

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JEREMY JAEGER, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

ZILLOW GROUP, INC., et al.,

Defendants.

No. 2:21-cv-01551-TSZ

CLASS ACTION

**STIPULATED PROTECTIVE ORDER**

1           Lead Plaintiff Jeremy Jaeger and Defendants Zillow Group, Inc., Richard Barton, Allen  
 2 Parker, and Jeremy Wacksman (collectively, “Defendants”) jointly stipulate and agree to the entry  
 3 of a protective order as described below:

4       1.     PURPOSES AND LIMITATIONS

5           Discovery in this action is likely to involve production of confidential, proprietary, or  
 6 private information for which special protection may be warranted. Accordingly, the parties hereby  
 7 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties  
 8 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
 9 protection on all disclosures or responses to discovery, the protection it affords from public  
 10 disclosure and use extends only to the limited information or items that are entitled to confidential  
 11 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
 12 confidential information under seal.

13      2.     “CONFIDENTIAL” OR “ATTORNEYS’ EYES ONLY” MATERIAL

14           Plaintiff believes that “Confidential” material is likely to include the following documents  
 15 and tangible things produced or otherwise exchanged containing or regarding:

- 16           • Plaintiff’s Financial Information, such as account statements, which reflect account  
 17 numbers, personal identifiable information (“PII”), or income or assets not relevant  
 18 to the Zillow transactions.
- 19           • Plaintiff’s transactions regarding Zillow securities to the extent the document  
 20 reflects Lead Plaintiffs’ financial information (*e.g.*, trade confirmations).

21           Defendants believe that “Confidential” material is likely to include the following  
 22 documents and tangible things produced or otherwise exchanged containing or regarding:

- 23           • Computer programming codes, algorithms, software, or hardware.
- 24           • Customer lists and customer information.
- 25           • Internal financial, tax, and accounting data and records.
- 26           • Proprietary business processes, including but not limited to pricing methodologies  
 27 and operational processes.

- 1 • Marketing plans and non-public market research performed by a party, or by a third
- 2 party, on its behalf.
- 3 • Confidential business communications, including contracts and contract
- 4 negotiations.
- 5 • Documents containing personal identifying information.
- 6 • Documents containing non-public, confidential information of third parties.
- 7 • Non-public business or strategy plans or forecasts.
- 8 • Non-public product or service plans, including documents reflecting non-public
- 9 research or development of future products or services.
- 10 • Intellectual property or trade secrets.

11 “Attorneys’ Eyes Only” (“AEO”) material shall include extremely sensitive “Confidential”  
 12 information or material, disclosure of which to another Party or Non-Party would create a  
 13 substantial risk of serious harm that could not be avoided by less restrictive means.

14 Notwithstanding the above examples, the Parties nevertheless retain the right to challenge  
 15 the designation of specific documents or categories of documents regardless of whether they are  
 16 included in either Party’s list of likely Confidential materials.

### 17 3. SCOPE

18 The protections conferred by this agreement cover not only Confidential material and AEO  
 19 material (as defined above), but also (1) any information copied or extracted from confidential  
 20 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
 21 testimony, conversations, or presentations by parties or their counsel that might reveal confidential  
 22 material. However, the protections conferred by this agreement do not cover information that is in  
 23 the public domain or becomes part of the public domain through trial or otherwise.

### 24 4. ACCESS TO AND USE OF CONFIDENTIAL AND AEO MATERIAL

25 4.1 Basic Principles. A receiving party may use Confidential material or AEO material  
 26 that is produced by another party or by a non-party in connection with this case only for  
 27 prosecuting, defending, or attempting to settle this litigation. Confidential material and AEO  
 28 material may be disclosed only to the categories of persons and under the conditions described in

1 this agreement. Confidential and AEO material must be stored and maintained by a receiving party  
 2 at a location and in a secure manner that ensures that access is limited to the persons authorized  
 3 under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
 5 by the Court or permitted in writing by the designating party, a receiving party may disclose any  
 6 confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees  
 8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the receiving party, and the officers, directors, and employees of the  
 10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
 12 designated;

13 (c) experts and consultants and any staff assisting them, to whom disclosure is  
 14 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 15 Agreement to Be Bound” (Exhibit A);

16 (d) the Court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication of  
 18 confidential material, provided that counsel for the party retaining the copy or imaging service  
 19 instructs the service not to disclose any confidential material to third parties and to immediately  
 20 return or destroy all originals and copies of any confidential material once its work is completed;

21 (f) during their depositions, witnesses in the action to whom disclosure is  
 22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
 23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court;

24 (i) Pages of transcribed deposition testimony or exhibits to depositions  
 25 that reveal confidential material must not be disclosed to anyone  
 except as permitted under this agreement;

26 (g) the author or recipient of a document containing the information or a  
 27 custodian or other person who otherwise possessed or knew the information;  
 28

(h) Stenographers engaged to transcribe depositions conducted in this action;

(i) litigation support vendors retained by counsel of record for the parties to assist in preparing for pretrial discovery, trial, and/or hearings in this action, and their staff;

(j) jury or trial consultants and mock jurors, provided they have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);

(k) any other persons as ordered by the Court or to whom the designating party has granted written consent;

(l) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by the parties engaged in settlement discussions; and

(m) insurers for any party to the extent reasonably necessary for the performance of their work associated with the litigation

4.3 Disclosure of “Attorneys’ Eyes Only” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any AEO material only to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel who are actively involved in the Proceedings and are not employees of any Party;

(b) the receiving party’s in house counsel, to whom disclosure is reasonably necessary for this litigation;

(c) experts and consultants and any staff assisting the receiving party’s counsel of record, to whom disclosure is reasonably necessary for this litigation, who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A). It shall be the obligation of counsel, upon learning of any breach of this Protective Order by any such expert or expert consultant, to promptly notify counsel for the Designating Party or non-Party of such breach;

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of AEO material, who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A). It shall be the obligation of counsel, upon learning of any breach of this Protective Order by any such service, to promptly notify counsel for the Designating Party or non-Party of such breach.

1 Counsel must instruct the service to immediately return or destroy all originals and copies of any  
2 AEO material after its work is completed;

3 (f) during their depositions, witnesses in the action to whom disclosure is  
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

6 (i) Pages of transcribed deposition testimony or exhibits to  
7 depositions that reveal AEO material may not be disclosed to  
8 anyone except as permitted under this agreement

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information.

11 (h) Stenographers engaged to transcribe depositions conducted in this action,

12 (i) litigation support vendors retained by counsel of record for the parties to  
13 assist in preparing for pretrial discovery, trial and/or hearings in this action, and their staff;

14 (j) jury or trial consultants and mock jurors, provided they have signed the  
15 “Acknowledgment and Agreement to be Bound”;

16 (k) any other persons as ordered by the Court or to whom the designating party  
17 has granted written consent;

18 (l) any mediator or settlement officer, and their supporting personnel, mutually  
19 agreed upon by the parties engaged in settlement discussions; and

20 (m) insurers for any party to the extent reasonably necessary for the performance  
21 of their work associated with the litigation.

22 (n) all Court filings and submissions to the mediator (both draft and final) may  
23 be disclosed to Plaintiff, regardless of whether they contain information or items designated by  
24 Defendants as “Attorneys’ Eyes Only,” although Plaintiff’s counsel will make best reasonable  
25 efforts to avoid disclosing specific AEO information or documents contained in those filings and  
26 submissions unless Plaintiff’s counsel determines it is reasonably necessary to do so to properly  
27 represent and/or advise Plaintiff. Moreover, nothing in this Stipulation shall be construed to  
28 prevent Plaintiff’s Counsel from discussing the strengths and weaknesses of this action with

1 Plaintiff. Counsel for the Parties also agree to meet and confer regarding AEO designations and  
2 disclosure to Parties, if case conditions render such disclosure appropriate.

3 4.4 Filing Confidential Material or AEO Material. Before filing confidential material  
4 or AEO material or discussing or referencing such material in court filings, the filing party shall  
5 confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine  
6 whether (1) the designating party will remove the confidential designation; (2) whether the  
7 document can be redacted; or (3) whether a motion to seal or stipulation and proposed order is  
8 warranted. During the meet and confer process, the designating party must identify the basis for  
9 sealing the specific confidential information at issue, and the filing party shall include this basis in  
10 its motion to seal, along with any objection to sealing the information at issue. To that end, the  
11 filing party will use best efforts to provide the designating party a Bates number list of documents  
12 marked Confidential or “AEO” material that the filing party intends to file, as soon as practicable  
13 but no later than three (3) business days before filing. The designating party will use best efforts  
14 to provide its position on the confidentiality of such documents as soon as practicable but no later  
15 than one (1) business day before filing. The parties agree to discuss in good faith reasonable  
16 deviations from the described timing of the procedure on an ad hoc basis, depending on the  
17 particular circumstances of that filing.

18 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that  
19 will be applied when a party seeks permission from the Court to file material under seal. A party  
20 who seeks to maintain the confidentiality of its information must satisfy the requirements of Local  
21 Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this  
22 requirement will result in the motion to seal being denied, in accordance with the strong  
23 presumption of public access to the Court’s files.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
26 or non-party that designates information or items for protection under this agreement must take  
27 care to limit any such designation to specific material that qualifies under the appropriate  
28 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not swept  
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
7 and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated for  
9 protection do not qualify for protection, the designating party must promptly notify all other parties  
10 that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
12 agreement or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
13 protection under this agreement must be clearly so designated before or when the material is  
14 disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
17 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
18 Confidential material or "ATTORNEYS' EYES ONLY" to each page that contains AEO material.  
19 If only a portion or portions of the material on a page qualifies for protection, the producing party  
20 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the  
21 margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
23 and any participating non-parties must identify on the record, during the deposition or other pretrial  
24 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
25 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
26 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
27 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
28 at trial, the issue should be addressed during the pre-trial conference.



1 (c) Other tangible items: the producing party must affix in a prominent place  
 2 on the exterior of the container or containers in which the information or item is stored the word  
 3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the  
 4 information or item warrant protection, the producing party, to the extent practicable, shall identify  
 5 the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 7 designate qualified information or items does not, standing alone, waive the designating party’s  
 8 right to secure protection under this agreement for such material. Upon timely correction of a  
 9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 10 in accordance with the provisions of this agreement.

## 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 19 regarding confidential designations without court involvement. Any motion regarding confidential  
 20 designations or for a protective order must include a certification, in the motion or in a declaration  
 21 or affidavit, that the movant has engaged in a good-faith meet and confer conference with other  
 22 affected parties in an effort to resolve the dispute without court action. The certification must list  
 23 the date, manner, and participants to the conference. A good-faith effort to confer requires a face-  
 24 to-face meeting or a telephone conference.

25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
 26 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
 27 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 28 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those

made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” or “ATTORNEYS’ EYES ONLY,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

Nothing in this Order shall be construed as authorizing or encouraging a party in this action to disobey a lawful directive from another court, and nor shall any provisions of this order be construed as preventing a party from disclosing confidential information in response to a lawfully issued subpoena, civil investigative demand, court order, or other compulsory process in connection with another litigation. The designating party shall bear the burden and expense of seeking to protect its confidential information from disclosure in response to a subpoena, civil investigation demand or court order issued in another action that calls for any receiving party to produce such materials.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential material or AEO material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected

1 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
2 terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment  
3 and Agreement to Be Bound” that is attached hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
5 MATERIAL

6 When a producing party gives notice to receiving parties that certain inadvertently  
7 produced material is subject to a claim of privilege or other protection, the obligations of the  
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
9 is not intended to modify whatever procedure may be established in an e-discovery order or  
10 agreement that provides for production without prior privilege review.

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving  
13 party must return or destroy all Confidential material or AEO material to the producing party,  
14 including all copies, extracts and summaries thereof.

15 Notwithstanding this provision, counsel are entitled to retain a limited amount of archival  
16 copies of all documents filed with the court, trial, deposition, and hearing transcripts,  
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
18 and expert work product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this agreement shall remain in effect until a  
20 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: February 6, 2023

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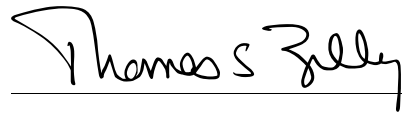
19 *Zillow Group, Inc., Richard Barton,*

20 *Allen Parker, and Jeremy Wacksman*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
5 documents, including the attorney-client privilege, attorney work-product protection, or any other  
6 privilege or protection recognized by law.

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8 DATED: July 7, 2023

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11 Thomas S. Zilly  
12 United States District Judge  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

1, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date] in the case of *Jaeger v. Zillow Group Inc.*, 2:21-cv-01551-TSZ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_